

REMARKS

Applicants thank Examiners Colon and Hafiz for their courtesies extended during the March 25, 2003 Examiner Interview. Reconsideration and allowance of the above-referenced application are respectfully requested. Claims 1-28 are pending. Claims 2-4 and 7-9 have previously been withdrawn from consideration. Claims 1 and 5 are allowed. Claims 22 and 23 are objected to. Claims 6, 10-14, 16, 22, 23, and 25-27 are canceled without prejudice or disclaimer by this amendment. Claims 15, 17, 18, 20, 21, 24, and 28 are amended by this amendment. New claims 29 and 30 add further limitations to claim 28. Claims 31 and 32 are added to replace and further clarify claims 22 and 23 which are objected to.

The Examiner asserts that the terminal disclaimer that was filed on June 6, 2002 is not accepted because it was not signed. A signed disclaimer, submitted concurrently with this response, disclaims the terminal portion of the patent granted based on this application that would extend beyond the expiration date of U.S. Patent No. 6,334,133. Thus applicants request that the double patenting rejection be withdrawn.

Claim 14 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particular point out and distinctly claim the subject matter which the applicants regard as the invention. Claim 14 has been canceled thus mooting the Examiner's rejection.

Claims 6 and 10 stand rejected under 35 U.S.C. §102(a) as being anticipated by the SubfinderTM System. Claims 6 and 10 have been canceled thus mooting the Examiner's rejection.

Claims 11-21 and 24-27 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the SubfinderTM System. Claims 11-14, 16 and 25-27 have been canceled thus mooting the Examiner's rejection. Claims 15, 17-21 and 24 have been amended to depend on claims 31 and 32, respectively, which replace objected claims 22 and 23, respectively, thus mooting the Examiner's rejection.

Claim 28 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Subfinder in view of Taylor (U.S. Patent 5,832,497). The Examiner asserts that:

As per claim 28, Subfinder discloses the substitute fulfillment system of claim 12 that enables substitute workers to search for work (reference A, page 1, paragraphs 1 and 2; reference B, abstract, page 2, paragraph 24).

Subfinder does not expressly disclose a website interface coupled to the server, the website interface posting a list of positions of absent workers that needs to be filled by substitute workers on a website, wherein the list of positions

is generated by the server using received information regarding absent workers thereby providing an opportunity for substitute workers to search for work.

Taylor discloses a website interface coupled to the server, the website interface posting a list of positions of absent workers that needs to be filled by substitute workers on a website, wherein the list of positions is generated by the server using received information regarding absent workers thereby providing an opportunity for substitute workers to search for work (col. 1, lines 33 - 42; col. 2, lines 48 - 51; col. 2, line 65 - col. 3, line 19; col. 6, lines 58 - 64; The reference discloses posting a list of positions generated from a server on a website and allowing work searchers to search through the list of positions.).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to utilize a website interface to interact with substitute workers searching for work because the Internet provides a convenient and globally accessible medium through which users can easily and quickly interact (Taylor, col. 2, lines 34 - 39).

As per claim 23, Taylor discloses the substitute fulfillment system of claim 22 wherein the server is further configured to secure a substitute worker in response to the substitute worker selecting a posted position via the Internet communication link (col. 4, line 63 - col. 5, line 5; col. 5, lines 49 - 62; The reference discloses allowing workers to select a posted position by submitting an application for that position. The reference further discloses employers reviewing submitted applications for particular job postings.).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to utilize a website interface to interact with substitute workers searching for work because the Internet provides a convenient and globally accessible medium through which users can easily and quickly interact (Taylor, col. 2, lines 34 - 39).

As per claim 28, Subfinder discloses a method for performing substitute fulfillment for a plurality of different organizations comprising:

receiving absentee information representing an absent worker via at least one communication link (reference A, page 1, paragraph 2; Subfinder receives absentee information of an absent worker via a telephone communication.);

generating a list of positions of absent workers that need to be filled by substitute workers (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically identifies potential substitute workers.).

Subfinder does not expressly disclose placing the list of positions on a website, receiving a response by a substitute worker selecting a posted position on the website via an Internet communication link; and securing via the Internet communication link the substitute worker who selected the posted position to fill in for the absent worker.

Taylor discloses placing the list of positions on a website, receiving a response by a substitute worker selecting a posted position on the website via an Internet communication link (col. 4, line 63 - col. 5, line 5; col. 5, lines 49 - 62; The reference discloses allowing workers to select a posted position by submitting an application for that position.); and

securing via the Internet communication link the substitute worker who selected the posted position to fill in for the absent worker (col. 4, line 63 - col. 5, line 5; col. 5, lines 49 - 62; The reference discloses allowing employers to review submitted applications for hiring of workers for particular job postings.).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to utilize a website interface to interact with substitute workers searching for work because the Internet provides a convenient and globally accessible medium through which users can easily and quickly interact (Taylor, col. 2, lines 34 - 39).

Claim 28 is directed to “A method for performing substitute fulfillment for a plurality of different organizations comprising: receiving absentee information representing an absent worker via at least one communication link; generating and posting a list of one or more positions of one or more absent workers that need to be filled by one or more substitute workers on a website; receiving a response by a substitute worker selecting a posted position on the website via an Internet communication link; and securing via the Internet communication link the substitute worker who selected the posted position to fill in for the absent worker” as recited in amended claim 28 (emphasis added).

The Examiner asserts that “Subfinder discloses ... generating a list of positions of absent workers that need to be filled by substitute workers (reference A, page 1, paragraphs 2 and 3; reference C, page 1, paragraph 6; Subfinder automatically identifies potential substitute workers.).” These cited sections do not teach or suggest generating a list of one or more positions of one or more absent workers that need to be filled by one or more substitute workers. Rather, these cited sections disclose a system that “begins calling from a list of qualified substitutes until the projected absence is filled” (emphasis added, see Reference A, page 1, paragraph 2). Generating a list of positions of absent workers that need to be filled and identifying substitute workers are not the same. By generating a list of positions of absent workers and posting the list, the method as recited in claim 28 allows potential substitute workers to secure an available position. In contrast, Subfinder is directed towards a system that fills these positions by contacting the substitute workers. Thus, Subfinder does not teach or suggest “generating and posting a list of one or more positions of one or more absent workers that need to be filled by one or more substitute workers on a website” as recited in claim 28 of the present application.

Moreover, as admitted by the Examiner, "Subfinder does not expressly disclose ... securing via the Internet communication link the substitute worker who selected the posted position to fill in for the absent worker" but asserts that this step is disclosed by Taylor (col. 4, line 63 - col. 5, line 5; col. 5, lines 49-62) and asserts that "The reference discloses allowing employers to review submitted applications for hiring of workers for particular job postings." However, Taylor does not teach or suggest this step. The cited sections of Taylor disclose an authorized user, e.g., a potential employer, retrieving applications for the jobs it has posted on the system (see col. 4, lines 63-65). In order to contact a potential employee, the user then requests the contact information of the potential employee (see col. 6, lines 35-57). Thus, the employer does not secure a worker but rather retrieves the application and contact information for the potential employee. In contrast, the method of claim 28 allows a potential substitute worker to access a list of one or more positions of one or more absent workers that need to be filled and secure the position that the substitute worker selects, e.g., the substitute worker is hired to be a substitute worker for the absent worker. Thus, neither Subfinder nor Taylor, singularly or in combination, teach or suggest the step of "securing via the Internet communication link the substitute worker who selected the posted position to fill in for the absent worker" as recited in claim 28 of the present application.

In addition, the Examiner fails to cite the requisite motivation to support the ultimate legal conclusion of obviousness under 35 U.S.C. §103. Obviousness is not an abstract concept, but must stem from the applied prior art as whole and have realistically impelled one having ordinary skill in the art to modify a specific reference in a specific manner to arrive at a specifically claimed invention with a reasonable expectation of successfully achieving a particular benefit. *In re Newell*, 891 F.2d 899, 13 USPQ2d 1210 (Fed. Cir. 1985). Accordingly, the Examiner is obliged to identify a source in the applied prior art for (1) claim limitations; and (2) the requisite motivation, teaching or suggestion to modify a reference or to combined references with the reasonable expectation of successfully achieving a particular benefit. *Smiths Industries Medical Systems v. Vital Signs, Inc.*, 183 F.3d 1347, 51 USPQ2d 1415 (Fed. Cir. 1999). The Examiner does not provide the proper motivation, teach or suggest to combine the cited art. Therefore, that burden has not been discharged.

Since each reference, Subfinder and Taylor, disclose a complete system, the Examiner needs to identify the proper motivation for combining the references. Specifically, the Examiner

fails to provide proper motivation for combining the teachings of Subfinder with the website interface of Taylor. Recognizing after the fact that such a modification would provide an improvement or advantage, without suggestion thereof by the prior art in an indication of improper application of hindsight considerations which is not proper criteria for resolving obviousness.

The Examiner asserts that "At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to utilize a website interface to interact with substitute workers searching for work because the Internet provides a convenient and globally accessible medium through which users can easily and quickly interact (Taylor, col. 2, lines 34-39)." This is not proper motivation but is improper use of hindsight.

Thus, for at least these reasons, claim 28, as well as dependent claims 29 and 30 are patentable over Subfinder in view of Taylor. As a result, the applicants request that the rejection of claim 28 under 35 U.S.C. §103(a) be withdrawn.

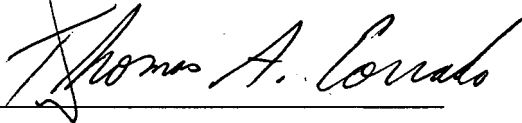
The foregoing is submitted as a full and complete Response to the Office Action mailed 19 February 2003, and early and favorable consideration of the claims is requested. If the Examiner believes any informalities remain in the application which may be corrected by Examiner's Amendment, or if there are any other issues which may be resolved by telephone interview, a telephone call to the undersigned attorney at (202)508-5843 is respectfully solicited.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 50-1458, and please credit any excess fees to such deposit account.

Respectfully submitted,

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